



U.S. Department of Justice

Antitrust Division

Liberty Square Building

*450 5th Street, N.W.
Washington, DC 20001*

April 13, 2022

The Honorable Maryellen Noreika
J. Caleb Boggs Federal Building
844 North King Street
Room 4324, Unit 19
Wilmington, DE 19801-3555

Re: *United States v. United States Sugar Corp., et al.*, No. 21-cv-1644 (MN)

Dear Judge Noreika:

The United States writes concerning the Motion for a Protective Order filed April 11 by American Sugar Refining Inc. (ASR or Domino) (D.I. 189).

The United States notified ASR on March 11, 2022, that the United States had designated deposition testimony from ASR's Alan Henderson, Mark Olson, and Adam Whittaker. The United States further notified ASR that the United States' exhibit list included 53 ASR documents generally relating to these witnesses and a fourth ASR employee on Defendants' February 28, 2022 witness list, Robert Sproull.

On March 21, the date specified in the Scheduling Order, ASR failed to provide specific confidentiality designations and instead claimed that it was designating *all* of the relevant deposition testimony and exhibits as confidential. ASR was the only third party that took this overbroad approach with the United States; every other third party provided proposed redactions to documents and/or specific portions of deposition testimony that they claimed as confidential. On March 22—the next day—the United States wrote to ASR and expressed its concern about and disagreement with the overbroad nature of ASR's designations. The United States and ASR met and conferred twice in the week of March 28.

On April 4, pursuant to the parties' proposed pretrial order, the United States repeated its objection to ASR's overbroad designations. On April 8, immediately after serving its final witness order to Defendants, the United States notified ASR that it was no longer calling Mr. Whittaker as a witness. Later that evening, ASR provided proposed redactions to the deposition testimony of Mr. Henderson and Mr. Sproull for the first time.

On April 11, ASR provided the United States with more narrowed confidentiality designations to the deposition testimony of Mr. Olson. Then, less than an hour before ASR filed its motion for a protective order (D.I. 187), ASR provided—for the first time—the United States with proposed redactions to ASR’s documents.

The United States reviewed ASR’s proposed redactions promptly after receiving them and does not object to the proposed redactions for 20 documents. These documents are identified in Appendix A. The United States further understands that ASR has withdrawn its confidentiality designations to eight documents. These documents are identified in Appendix B.

For the remaining proposed document redactions and deposition testimony, the United States will continue to work with ASR to attempt to resolve disagreements before trial. Should it become necessary, the United States will raise unresolved confidentiality issues with the Court as set forth in the pretrial order (D.I. 173), as modified by the Court (D.I. 176).

We thank the Court for your attention to this matter.

Respectfully submitted,

/s/ Brian Hanna

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Appendix A

ASR Motion Exhibit No.	Trial Exhibit No.
3	PTX017
5	PTX019
6	PTX023
7	DTX047
8	PTX025
9	DTX048
10	PTX026
11	PTX027
12	PTX028
15	PTX031
16	PTX033
18	DTX057
19	PTX037
20	PTX040
21	PTX041
23	DTX063
25	PTX047
26	PTX048
31	PTX058
34	PTX062

Appendix B

ASR Motion Exhibit No.	Trial Exhibit No.
22	PTX043
27	PTX049
28	PTX051
32	PTX059
33	PTX061
35	PTX063
36	PTX064
37	PTX065